

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON

3
4 JAMES S. GORDON, JR.,
5 Plaintiff,

6 v.

7 IMPULSE MARKETING, INC., JEFFREY
8 GOLDSTEIN, PHILLIP HUSTON, and
9 KENNETH ADAMSON,
Defendants.

No. CV-04-5125-FVS

ORDER DENYING PLAINTIFF'S
RULE 60(B) MOTION TO VACATE
JUDGMENT

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11 **THIS MATTER** comes before the Court on the Plaintiff's Rule 60(b)
12 Motion To Vacate Judgment. (Ct. Rec. 564). Plaintiff is proceeding
13 pro se. Defendants are represented by Floyd E. Ivey and Sean A.
14 Moynihan.

15 **BACKGROUND**

16 Plaintiff, James Gordon, is a Washington resident and the
17 registered user of the internet domain name "gordonworks.com."
18 Defendants are Impulse Marketing Group, Inc. ("Impulse"), a Nevada
19 corporation, and three of its employees, Kenneth Adamson, Jeffrey
20 Goldstein, and Phil Huston. Impulse is an electronic marketing
21 company that transacts business in Washington by sending commercial
22 electronic mail messages (email) to Washington state residents.
23 Impulse operates by collecting personally identifiable information
24 from individuals who sign up to receive free products and/or services
25 at websites run by Impulse and/or its marketing partners. In
26 consideration for receiving free products and/or services from an

1 Impulse related website, it requires that individuals using its
2 websites agree to submit accurate personal subscriber information
3 ("Subscriber Profiles"). By submitting their Subscriber Profiles,
4 individuals grant Impulse the right to transfer the Subscriber
5 Profiles to third parties for marketing purposes. Impulse Marketing
6 derives revenue from the licensing and/or use of accurate Subscriber
7 Profiles.

8 Plaintiff initiated the present lawsuit on November 23, 2004,
9 alleging that Impulse violated Washington's Commercial Electronic Mail
10 Act ("CEMA"), RCW § 19.190 et seq., and Washington's Consumer
11 Protection Act ("CPA"), RCW § 19.86 et seq., by initiating and/or
12 conspiring with others to initiate unsolicited commercial emails to
13 various addresses at Plaintiff's domain, "gordonworks.com".
14 Defendants moved to dismiss the complaint on January 26, 2005, but the
15 Court denied this motion. (Ct. Rec. 2; Ct. Rec. 38).

16 On March 29, 2006, Plaintiff sought permission to amend the
17 complaint. (Ct. Rec. 313). Plaintiff sought to add claims under the
18 Federal CAN-SPAM Act (15 U.S.C. § 7701 et seq.), Washington's
19 Deceptive Offers statute (RCW 19.170), Washington's Identity Crimes
20 statute (RCW 9.35), and a new provision of CEMA (R.C.W. § 19.190.080).
21 Plaintiff also sought to add additional defendants, Jeffrey Goldstein,
22 Kenneth Adamson, and Phillip Huston, officers and/or directors of
23 Impulse. On May 2, 2006, the Court granted Plaintiff leave to amend
24 the complaint to include the additional claims and Defendants, but
25 denied their request to name an additional party plaintiff. (Ct. Rec.
26 356).

1 Plaintiff filed his First Amended Complaint ("FAC") on June 13,
2 2006. (Ct. Rec. 384). On August 31, 2006, Defendants moved to
3 dismiss the FAC on a number of grounds. Without seeking leave of the
4 Court, Plaintiff filed a Second Amended Complaint ("SAC"), (Ct. Rec.
5 448-3), along with a response to the motion to dismiss. Defendants
6 objected to the SAC as an unauthorized pleading. Plaintiff then
7 sought leave to file the SAC. The Court denied Plaintiff's request to
8 file the SAC, but granted Plaintiff leave to plead damages for his
9 Prize Statute claim.

10 On May 14, 2007, the Court denied Defendants' motion to dismiss
11 the FAC. (Ct. Rec. 553). The Court expressed concern, however, that
12 the FAC relied upon vague statements and conclusory allegations. *Id.*
13 at 11. Plaintiff filed a more definite statement on June 22, 2007.
14 (Ct. Rec. 500). Like the FAC, it failed to limit Plaintiff's claims
15 to "a particular set of emails during a particular period of time."
16 (Ct. Rec. 512 at 2). The Court ordered Plaintiff to file an amended
17 pleading setting forth the information described in its May 14 Order,
18 thereby giving Plaintiff "one final opportunity to remedy his vague
19 complaint." *Id.* at 2-3.

20 Plaintiff thereafter filed his Amended First Amended
21 Complaint ("AFAC"). (Ct. Rec. 513). The AFAC differed from the FAC
22 in only two respects of significance. First, it alleged that
23 Plaintiff suffered damages as a result of Defendants' violations of
24 Washington's Prize Statute. AFAC ¶¶ 4.3.3-4.3.5. Second, three
25 exhibits were attached to the AFAC. Exhibit A consisted of a compact
26 disc containing a software program and all of the emails at issue in

1 this litigation. AFAC ¶ 3.8. Exhibit B consisted of three requests
2 Plaintiff sent to Defendants asking them to stop sending him
3 commercial emails. *Id.* ¶ 3.9. Exhibit C consisted of "a series of
4 examples of emails from Defendants." *Id.* ¶ 3.17.

5 Defendants moved to dismiss the AFAC on the grounds that it
6 failed to comply with either the requirements of Rule 8 or this
7 Court's prior orders. The Court agreed and issued an order of
8 dismissal, with prejudice, on July 17, 2008, in favor of Defendants on
9 all causes of action. (Ct. Rec. 553). Defense counsel subsequently
10 moved for an award of reasonable attorney's fees, and the Court
11 granted Defendant's request, in part, on September 23, 2008. (Ct.
12 Rec. 561). Plaintiff now moves the Court to vacate the judgment
13 rendered in this case pursuant to Federal Rule of Civil Procedure
14 60(b).

15 **DISCUSSION**

16 Plaintiff's basis for reconsideration is the "propensity on the
17 part of defendant's counsel to deny, lie, confuse, or obscure the
18 truth." (Ct. Rec. 564 at 8). Plaintiff requests that the Court
19 vacate the judgment due to fraud or misrepresentation of counsel. *Id.*
20 Reconsideration is available under Rule 60(b) upon a showing of (1)
21 mistake, inadvertence, surprise, or excusable neglect; (2) newly
22 discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied
23 or discharged judgment; or (6) any other reason justifying relief.
24 Fed. R. Civ. P. 60(b). Here, Plaintiff fails to present a valid basis
25 for Rule 60(b) relief. Plaintiff has demonstrated no new or different
26 facts or circumstances, newly discovered evidence, or mistake,

1 inadvertence, surprise, or excusable neglect to warrant
2 reconsideration. Nor has he alleged that relief is appropriate under
3 Rule 60(b)(4)-(6). Plaintiff's allegations of defense counsel fraud
4 are unsubstantiated and do not provided a basis for this Court to
5 reconsider its judgment in this matter. Accordingly,

6 **IT IS HEREBY ORDERED** that the Plaintiff's motion for
7 reconsideration (**Ct. Rec. 564**) is **DENIED**.

8 All pending motions, specifically **Ct. Rec. 573** and **Ct. Rec. 575**,
9 are **DENIED as moot**.

10 **IT IS SO ORDERED.** The District Court Executive is hereby
11 directed to enter this order and furnish copies to counsel for
12 Defendants **and to Plaintiff**.

13 **DATED** this 21st day of October, 2008.

14 S/Fred Van Sickle
15 Fred Van Sickle
16 Senior United States District Judge
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